



DATE: May 9, 2001

Notice PHL 07-01

MEMORANDUM FOR: All Project Owners & Management Agents of Section 8 Assisted Properties

FROM: Encarnacion Loukatos, Director, Philadelphia Multifamily Hub 3AHMLA

SUBJECT: Guidance for Requesting **Rental Adjustments** for Escalating **Energy Costs**

Utility companies have recently been passing on to property owners and residents increasingly higher gas, fuel oil and electric costs. It is not known how long these **higher energy costs** will continue. However, it is clear that some property owners will need to request rental adjustments to cover these higher energy costs and also submit updated utility surveys in order to adjust utility allowances for residents who pay their own utility bills.

This guidance provides procedures for owners to use to request the Department's **one-time lump-sum relief** to cover increased utility costs attributed to increased utility rates and/or increased utility usage.

For the purpose of this guidance, the rent adjustment procedures will cover the following categories: 1) Units under HAP contracts that have been *renewed* under Section 524 of the **Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA)**, 2) Units under HAP contracts that have not expired and where rents are adjusted by the *Automatic Annual Adjustment Factor (AAF)*, and 3) Units where rents are adjusted by the *budget-based* method.

1. UNITS WITH HAP CONTRACTS RENEWED UNDER MAHRA

Effective immediately, the Department will consider providing temporary, emergency utility cost relief, at HUD's discretion, for units where contract rents are paid pursuant to a HAP contract that has been renewed under MAHRA, no matter whether the contract rents were last adjusted by an OCAF or on a budget-basis.

The approval of such relief for a property is subject to Section 8 funding availability.

This emergency utility cost relief will be in the form of a one-time, lump sum amount to cover increased utility costs that have occurred during the months beginning September 1, 2000, and ending March 31,

2001. (NOTE: The utility lump sum increase does not increase the base used for the next application of a rent adjustment). Owners/managers must submit their requests for relief to the HUD office or to the Contract Administrator **no later than September 30, 2001**.

This lump sum amount will only be approved to cover owner-paid utility costs, not for tenant-paid utility costs covered by the utility allowance. All owners that receive Section 8 assistance and where residents pay their own utilities, must submit up-to-date utility surveys in order to recommend whether utility allowances should be increased for residents. A lump sum adjustment will not be processed without updated utility allowances for residents. Guidance for processing utility allowance increases is found in Chapter 7 of HUD Handbook 4350.1.

To request the utility lump sum amount, an owner must submit the attached Worksheet to the Contract Administrator, HUD, PHFA (Philadelphia Housing and Finance Agency) or DSHA (Delaware State Housing Agency) whichever is applicable. The Worksheet is submitted instead of a full, budget-based rent increase package under the instructions in HUD Handbook 4350.1, Chapter 7 or the streamlined budget-based processing instructions in Notice 99-13. Owners must fully document the increased utility expenses. Actual billing and usage records must be included since the costs have already been incurred (i.e., actual utility consumption comparisons from prior year's utility bills, etc.). **Owners must also certify that they have used all other available sources of funding first, if available (i.e., excess income, residual receipts, etc.).**

The process for requesting the utility lump sum amount is similar to the Department's Section 8 special claim process. The owner must submit a package containing the completed **Worksheet (Attachment 1)**, supporting documentation and a form **HUD-52670, Voucher**. The package must be submitted to the Contract Administrator (HUD, PHFA or DSHA) for review and approval. The Voucher must be annotated under Part III, 2., to reflect an amount for the energy adjustment, i.e., type in bold **"UTILITY LUMP SUM AMOUNT"**.

It is possible that the vouchers submitted for the one-time, utility lump sum amounts that are approved may result in Section 8 funding increases that are over the 180% default threshold in TRACS. In these cases, funding coordinators will ensure that the threshold is increased in order to prevent vouchers from being delayed or returned to the owners by the Section 8 Financial Management Center.

In the following cases, the existing Section 8 renewal HAP contract does **not** provide for HUD approval of a budget-based adjustment of the contract rents: 1) a restructured project subject to a HAP contract renewed under Option 3, and 2) Mark Up to Market units covered by a HAP contract renewed under Option 1. To receive a utility lump sum adjustment for units *in these two categories*, the owner must execute **Attachment 2**, a supplement to the Section 8 HAP Renewal HAP Contract between the owner and the Contract Administrator.

Increase in contract rent for most Section 8 units renewed under the MAHRA Renewal Guidebook Options 1, 2, 3 and 5 is subject to comparability (rent reasonableness). For Section 8 units under MAHRA for which the contract rent is subject to comparability, the total of the utility lump sum amount plus the current Section 8 rent potential may not exceed the comparable rent potential. "Current Section 8 rent potential" for a HAP contract is the sum of all current Section 8 contract rents for the contract units. "Comparable rent potential" is the sum of the maximum reasonable rents for the contract units as specified in the latest Rent Comparability Study (RCS) for the contract units submitted by the owner in accordance with HUD requirements.

Non-Section 8 units will continue to have their rents adjusted based on outstanding guidance.

Option 1, Mark Up to Market:

For those owners who have renewed under Option 1, Mark Up to Market, if comparable rent potentials have increased faster than the rent potentials determined by applying the OCAF, the owner may submit an update of the last RCS. The lump sum amount added to the current rent potential must not result in a rent potential exceeding comparable rent potential.

The owner must execute and submit the Supplement to HAP Contract (**Attachment 2** of this memo).

Option 2, At or Below Comparable Market Rents:

For owners that renewed under Option 2 of the Section 8 renewal guidance, the lump-sum amount added to the current rent potential also must not result in the rent potential exceeding comparable rent potential. Owners whose current rent potential is already at comparable rent potential may also submit an update of their last RCS. The utility lump sum amount can be applied up to the new, adjusted comparable market rent potential level only.

Option 3, Referred to OMHAR:

The Owner is not eligible to receive a utility lump sum adjustment while the property is at OMHAR for processing for either a Lite or Full Restructuring. Once the property has been returned to the Field by OMHAR, however, an owner whose rents were reduced to comparable market rents will be eligible for the utility lump sum amount only if an adjusted, updated RCS indicates that market conditions have changed. As in Options 1 and 2, the increased rent potential must be restricted to comparable market rent potential.

OMHAR properties that were closed with the rents established based on a budget with above-market rents should follow the worksheet and special claim method described above. However, the increased rent potential will not be restricted to comparable market rent potential.

The owner must execute and submit the supplement to HAP contract (**Attachment 2** of this memo).

Option 4, Exception Properties:

For owners of exception properties under Option 4, the worksheet and special claim method described above should be utilized. However, comparability does not apply. The increased rent potential will not be restricted to comparable rent potential.

Option 5, Portfolio Reengineering Demonstration or Preservation Properties:

Properties that closed under the Portfolio Reengineering Demonstration Program (PRDP) and had their mortgages restructured and/or had rents reduced to market have their rents adjusted by an OCAF each year for the four years following the execution of the Demonstration Contract. If the mortgage was restructured and/or rents were reduced to market, owners will be eligible for approval of the utility lump sum amount only if an adjusted, updated RCS indicates that market conditions have changed. The increased rent potential may not exceed comparable rent potential.

PRDP properties that were closed but the mortgage was not restructured and the project's rents were not reduced to market must submit the request for utility lump sum adjustment to Headquarters through the Philadelphia HUB Director Encarnacion Loukatos.

Owners of Preservation properties have rents adjusted according to the terms outlined under the approved Plan of Action (POA). The POA may allow for a budget-based, AAF or OCAF adjustment. If the POA indicates rents may be adjusted by either a budget-based or AAF method, owners may request an adjustment between renewals according to existing guidance contained in HUD Handbook 4350.1, Chapter 34 or Chapter 7. If the POA indicates rents are to be adjusted by an OCAF, no additional adjustment is possible.

The updated RCS mentioned will not be construed as a new RCS submission. Appraisers should obtain the adjusted rents of comparable properties used in the last study. The adjusted, updated RCS must be certified by an appraiser and will be at the owner's expense.

2. **UNITS WHERE RENTS ARE ADJUSTED BY THE BUDGET-BASED METHOD**

There is no change to the procedures for processing budget-based rent increases for units without HAP contracts or with HAP contracts not yet renewed under MAHRA.

Units *with* Section 8 HAP contracts that have *not yet expired* must continue to follow outstanding guidance based on the HAP Contracts.

Units *without* Section 8 contracts should continue to follow existing guidance on budget-based rent increases found in Chapter 7 of HUD Handbook 4350.1 or Notice 99-13.

Properties with Rent Supplement and RAP contracts that are *FHA-insured* cannot be amended and thus the Department cannot provide relief similar to that provided for properties with Section 8 rental assistance. However, Rent Supplement and RAP contracts in *non-insured* projects can be amended. The Department is investigating the possibilities of providing relief to these projects.

Owners must submit recommended updated changes to the utility allowances for Section 8 subsidized residents according to guidance in HUD Handbook 4350.1, Chapter 7.

3. **UNEXPIRED HAP CONTRACTS WHERE RENTS ARE ADJUSTED BY THE AUTOMATIC ANNUAL ADJUSTMENT FACTOR (AAF)**

There is **no change** to the procedures for **processing AAFs** for a HAP contract that has not expired. The HAP contract contains a provision permitting HUD to approve a **special** rent increase, at any time, based upon substantial and general documented increases in utilities, real estate taxes or hazard insurance. Existing guidance is found in HUD Handbook 4350.1, **Chapter 34**. Owners must submit recommended updated changes to **utility** allowances, if applicable, according to guidance in HUD Handbook 4350.1, **Chapter 7**.

In order for owners to take advantage of the opportunity for a utility lump sum adjustment, properties must be acceptably managed and the owner must be in good standing with all Business Agreements signed with the Department.

Should you have any questions, please contact your Project Manager at **(215) 656-0609**, or TTY **215 656.3542** for the hearing impaired..

Attachments

ENERGY LUMP SUM COST WORKSHEET
Attachment 1

Project Name: _____

Project Owner: _____ FHA Project #: _____

Section 8 #: _____ No. of Units _____

Total Number of Unassisted Units in Property: _____

Date of Last Rent Adjustment: _____ [] OCAF or [] Budget Based

Check One: [] OPTION 1 [] OPTION 2 [] OPTION 3 [] OPTION 4 [] OR [] OPTION 5

INDICATE WHICH UTILITY IS TENANT PAID, IF APPLICABLE _____ Gas/Oil/Electric

IF TENANT PAID, INDICATE DATE UTILITY ALLOWANCES LAST UPDATED _____

A. Total Utility Increase Amount

1. Total of invoices from September 1999 - March 2000 \$ _____
2. Total of invoices from September 2000 - March 2001 \$ _____
3. **Amount of increase** (Line 2. minus Line 1.) \$ _____

(Attach **invoices** September 1999 - March 2000, also September 2000 - March 2001 as support.
If invoices straddle months, however, do not prorate. Instead, be consistent for each month).

B. Prorated Utility Increase

If partially assisted, prorate the total increase based on the Section 8 rent potential percentage.

1. Total Rent Potential for all units in the property \$ _____
2. Total Rent Potential for all Section 8 units \$ _____
3. Percentage of rent potential that is Section 8 _____ %
(Line 2. divided by Line 1.)

Line **A.3** (Amount of Increase) **X** Line **B.3** (Percentage Section 8 Rentals)
= **TOTAL PRORATED ENERGY INCREASE** \$ _____

LINE 1 CURRENT ANNUAL SECTION 8 RENT POTENTIAL: \$ _____

LINE 2 TOTAL PRORATED ENERGY INCREASE: \$ _____
(FROM CALCULATION ON PREVIOUS PAGE) (EXCLUDE TENANT PORTION, IF APPLICABLE)

LINE 3 CURRENT ANNUAL SECTION 8 RENT
POTENTIAL + LUMP SUM ENERGY AMOUNT= \$ _____
(LINE 1 + LINE 2)

The following must be completed if rents are subject to comparability:

LINE 4 TOTAL COMPARABLE RENT POTENTIAL
(Based on Last RCS, adjusted annually by OCAF, or Attached Updated RCS): \$ _____

LINE 5 TOTAL NEW SECTION 8 RENT POTENTIAL RESULTING FROM
ADDED LUMP SUM (enter results from line 3 above) \$ _____

IMPORTANT: Compare Line 5 with Line 4. Total new Section 8 rent potential must be no higher than Line 4.)

LINE 6 ADJUSTED LUMP SUM AMOUNT \$ _____
(If Line 5 exceeds Line 4 reduce lump sum amount excess so that total does not exceed Line 4)

LINE 7 TOTAL ESTIMATED LUMP SUM AMOUNT TO BE VOUCHERED FOR:
(From either Line 2 above or Line 6, if subject to comparability)
\$ _____

I (We) certify that prior to requesting this energy lump sum adjustment, all other sources of funding have been exhausted. Under the penalties and provisions of Title 18, United States Code, Chapter 47, Section 1001, the statements contained in this request have been examined by me (us) and to the best of our knowledge and belief are true, correct and complete.

(OWNER OR OWNER'S REPRESENTATIVE
SIGNATURE)

DATE

(HUD PROJECT MANAGER OR
CONTRACT ADMINISTRATOR SIGNATURE)

DATE

U.S. Department of Housing and Urban Development

Office of Housing

Project-based Section 8

FEDERAL FISCAL YEAR 2001

ENERGY LUMP SUM ADJUSTMENT

SUPPLEMENT TO HAP CONTRACT

1 CONTRACT INFORMATION

PROJECT

Section 8 Project Number _____

FHA Project Number (if applicable) _____

Project Name _____

Project Description

TYPE OF UNITS

- ☐ Check this box for a restructured project subject to a HAP contract renewed under Option 3 of the HUD Renewal Guidebook.
- ☐ Check this box for Mark Up to Market units covered by a HAP contract renewed under Option 1 of the HUD Renewal Guidebook.

PARTIES TO HAP CONTRACT

Name of Contract Administrator

Address of Contract Administrator

Name of Owner

Address of Owner

2 PURPOSE OF SUPPLEMENT

- a.** This is a supplement to the Section 8 Renewal Contract between the owner and the contract administrator for the project identified above.
- b.** Subject to the availability of sufficient appropriations to make housing assistance payments in accordance with the Renewal Contract, as determined by HUD, HUD may consider approving, at HUD's discretion, a lump-sum energy cost adjustment of rents for the contract units, from budget authority appropriated by the Congress, and available for this purpose. Such adjustment shall only be considered and paid for actual energy costs incurred by the owner during Federal Fiscal Year 2001 with respect to the Section 8 contract units subject to the Renewal Contract.

3 FY 2001 ENERGY COST LUMP SUM ADJUSTMENTS

a. Lump Sum Energy Cost Adjustments

At the request of the owner, HUD may approve a one-time budget-based lump sum energy cost adjustment, at HUD's discretion, and in the amount determined by HUD, to cover unanticipated increases in owner-paid utility costs actually incurred and paid by the owner in Federal Fiscal Year 2001. Such a lump sum energy cost adjustment may only be considered and approved by Contract Administrator in accordance with HUD requirements.

b. Comparability

1. The sum of the lump sum utility adjustment plus the pre-adjustment contract rents may not exceed the sum of the comparable market rents for the contract units.
2. The Contract Administrator may require that the Owner submit to the Contract Administrator a rent comparability study prepared (at the Owner's expense) in accordance with HUD requirements.
3. Notice of rent adjustment by the Contract Administrator to the Owner shall automatically constitute an amendment of the Renewal Contract.

SIGNATURES:

Contract administrator (HUD or PHA)

Name of Contract Administrator (Print)

By: _____
Signature of authorized representative

Name and official title (Print)

Date _____

Owner

Name of Owner (Print)

By _____
Signature of authorized representative

Name and title (Print)

Date _____

